

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

**FIFTH AMENDED
SCHEDULING ORDER**

v.

Case No. 21-cr-7

JOHN STUART,

Defendant.

With good cause shown, defendant's unopposed motion to adjourn the pretrial motions deadline [25] is granted. The Fourth Amended Scheduling Order [24] is further amended as follows:

- (1) All pretrial motions, both dispositive and non-dispositive, including all supporting papers and memoranda of law in support thereof, shall be filed by **October 4, 2021**. Any motion to suppress statements or physical evidence must initially be accompanied by an appropriate affidavit (or declaration) from an individual with personal knowledge, failing which the court will normally recommend that the motion be denied without an evidentiary hearing. *See United States v. Marshall*, 2012 WL 5511645, *2 (W.D.N.Y.), adopted 2012 WL 5948782 (W.D.N.Y. 2012); *United States v. Longo*, 70 F.Supp.2d 225, 248 (W.D.N.Y. 1999). **ALL MOTIONS SEEKING SEVERANCE ARE TO BE SEPARATELY FILED WITH HON. LAWRENCE J. VILARDO.**
- (2) All responses to pretrial motions, including all supporting papers and memoranda of law in support thereof, filed in accordance with the preceding paragraph shall be filed by **October 18, 2021**.
- (3) Replies, if any, shall be filed by **October 25, 2021**.
- (4) **Oral argument on any pretrial motions shall be heard on November 1, 2021 at 10:00 a.m.** If necessary, an evidentiary hearing will be scheduled for a later date.
- (5) **IF NO MOTIONS ARE FILED ON OR BEFORE THE AFORESAID DATE, THE GOVERNMENT SHALL IMMEDIATELY FILE A MOTION REQUESTING A TRIAL BEFORE THE HON. LAWRENCE J. VILARDO.**

In accordance with the United States Supreme Court's decisions in Zedner v. United States, 547 U.S. 489 (2006) and Bloate v. United States, 559 U.S. 196 (2010), the period of time from the date of this order, until the date of making and/or filing of pretrial motions is excluded pursuant to and in accordance with the provisions contained in 18 U.S.C. §3161(h)(7)(A) and 18 U.S.C. §3161(h)(7)(B)(iv) for the reasons stated on the record.

If no motions are filed by the filing date set forth above, the case shall be referred to the district court judge to whom the case is assigned for trial and the speedy trial exclusion set forth above shall terminate as of the cutoff date for the filing of motions set forth herein.

Any requests for extension of the above dates must be made by the filing of a motion, electronically, with the Clerk of the Court, prior to the due date. Such application shall be made only after conferring with all other parties and shall include a suggested rescheduled date, agreeable to all parties. As a general rule, no request for an extension will be granted unless extraordinary circumstances are present.

Any motion identified in Rule 12(b)(3) that is not filed by the deadline set for filing pretrial motions will be denied as untimely, unless accompanied by a showing of "good cause". *See* Rule 12(c)(3).

Counsel for the parties are directed to provide the Court with a courtesy copy of Motions, Responses, Replies, Memoranda of Law, and Exhibits clearly marked.
SO ORDERED.

Dated: September 23, 2021

/s/ Jeremiah J. McCarthy
JEREMIAH J. MCCARTHY
United States Magistrate Judge